

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**XIAN LONG WANG** : DETERMINATION  
for Review of a Notice of Proposed Revocation of a License, Permit or Registration Pursuant to Article 28 of the Tax Law. : DTA NO. 830539

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Petitioner, Xian Long Wang, filed a petition for review of a notice of proposed revocation of a license, permit or registration, pursuant to article 28 of the Tax Law. On August 26, 2022, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Brendan Roche, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Tax & Consulting NY, Inc. (Wenyao Song, CPA), did not submit a response by September 26, 2022, which date triggered the 90-day deadline for issuance of this determination. After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Tax Appeals lacks jurisdiction over the petition.

***FINDINGS OF FACT***

1. Petitioner, Xian Long Wang, filed a petition that was received by the Division of Tax Appeals on July 23, 2021. The envelope containing the petition does not bear a legible USPS postal mark indicating when the petition was mailed.

2. The petition identified the petitioner as “Xian Long Wang.”
3. The petition contained a notice of proposed refusal to issue a certificate of authority issued by the Department of Taxation and Finance on May 27, 2021. This notice was issued in the name H & J Spa, Inc., and not Xian Long Wong.
4. The petition did not include or identify any notice issued in the name “Xian Long Wang.” The petition also did not identify any relationship between petitioner and H & J Spa, Inc.
5. On August 17, 2021, a written request was made by the Division of Tax Appeals to petitioner to provide additional information and documentation. The written request indicated that the Division of Tax Appeals needed the statutory notice offering appeal rights in the name of Xian Long Wang, his personal taxpayer ID number, and assessment number(s) and that failure to provide the notice within 30 days may result in a dismissal.
6. Petitioner did not provide the corrections nor attach a copy of a statutory notice offering appeal rights in his name.
7. On August 26, 2022, the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioner with a copy to his representative. The notice stated, in sum, that the petition is in improper form and the Division of Tax Appeals lacks jurisdiction.
8. In response to the notice of intent to dismiss petition, the Division of Taxation’s (Divisions) representative submitted a letter on September 22, 2022, stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. The Division agrees that the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008. The petition did not include a statutory notice issued in petitioner Xian Long Wang’s name as required by 20 NYCRR 3000.3, and petitioner has failed to provide such a notice or other corrected

information establishing appeal rights in his name under Tax Law § 2008. The Division, therefore, agrees with the proposed dismissal.”

9. Petitioner did not submit a response to the notice of intent to dismiss the petition.

### ***CONCLUSIONS OF LAW***

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Department of Taxation and Fin. v Tax Appeals Tribunal*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]). Tax Law § 2008 limits the jurisdiction of the Division of Tax Appeals to matters

“protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund or credit application, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration or any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law.”

B. Pursuant to 20 NYCRR 3003.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested.”

C. Pursuant to 20 NYCRR 3000.3 (b) (3), a petition shall contain “the date of the notice, the tax article involved, and the nature of the tax.”

D. Where the petitioner fails to correct the petition within the time prescribed, the Supervising Administrative Law Judge will issue a determination dismissing the petition (*see* 20 NYCRR 3000.3 [d]).

E. The petition filed in this matter was not filed in accordance with Tax Law § 2008 and 20 NYCRR 3000.3. Specifically, petitioner neglected to include or identify a required statutory notice or conciliation order in his name, Xian Long Wang. Petitioner also failed to identify any relationship with the party to whom the notice attached was issued. Therefore, petitioner failed to present a notice for which the Division of Tax Appeals has jurisdiction (*see* Tax Law § 2008). Thus, as petitioner failed to attach or properly identify a notice in his name contemplated by Tax Law § 2008, the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition and dismissal is warranted (*see* 20 NYCRR 3000.3 [d]; 3000.9 [a] [4] [i]; *see Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

F. IT IS ORDERED, on the supervising administrative law judge's own motion, that the petition be, and it is hereby, dismissed with prejudice as of this date.

DATED: Albany, New York  
December 22, 2022

/s/ Herbert M. Friedman  
SUPERVISING ADMINISTRATIVE LAW JUDGE